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Pro Bono Counsel for Nicholas Serino,  
 Legal Aid Center of Southern Nevada

UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEVADA

In re:	Chapter 7
ROBERT J. FLORISI, and ANGELE FLORISI,  Debtor(s).	Case No. BK-S-05-18091-BAM Adversary No. 05-1251-BAM Adversary No. 06-1076-BAM
NICHOLAS SERINO,  Appellant,  vs. ROBERT J. FLORISI and ANGELE FLORISI,  Appellees.	APPEAL NUMBER 10-15  <b>District Court Case Number:              2:10-CV-0080-JCM-LRL</b>  <b>MOTION TO WITHDRAW AS              COUNSEL OF RECORD AND TO              EXPAND BRIEFING SCHEDULE</b>

Laurel E. Davis of Fennemore Craig, P.C., moves to withdraw as counsel for Nicholas Serino, and to expand the briefing schedule to accommodate Mr. Serino. This Motion is made and based upon the points and authorities set forth below, the accompanying Declaration of Laurel E. Davis ("Davis Declaration"), the papers and pleadings on file herein and any evidence adduced at the time of any hearing of this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

1. An Application for Order to Show Cause Why Nicholas Serino, aka Richard Serino, Should not be Held in Contempt of this Court's October 5, 2006 and January 16, 2008 Orders Pursuant to Fed.R.Bankr. 9020, was filed December 19, 2008 ("OSC Application") in the Bankruptcy Court as Docket No. 127. Davis Declaration, ¶ 1.

2. At that time, Nicholas Serino was not represented by counsel. Davis Declaration, ¶ 2.

3. In January of 2009, Mr. Serino sought representation through the Legal Aid Center of Southern Nevada. Davis Declaration, ¶ 3.

4. On January 27, 2010, Laurel E. Davis prepared and filed a Notice of Appearance as Pro Bono counsel through the Legal Aid Center of Southern Nevada, with respect to the OSC Application. Davis Declaration, ¶ 4.

5. Evidentiary hearings on the OSC Application were held April 27, 2009 (DE 172, Serino Testimony; DE 185, Rest); May 22, 2009 (DE 176, Vol. I; DE 177, Vol II); June 1, 2009 (DE 182, Vol. I; DE 183, Vol. II); and June 22, 2009 (DE 184). Davis Declaration, ¶ 5.

6. After the evidentiary hearings, the Court took the OSC Application under submission. Davis Declaration, ¶ 6.

7. On April 13, 2010, the Court rendered its Opinion regarding the OSC Hearings, (DE 196), which required a further declaration from counsel for Florisi to fix the award of attorneys' fees and costs. Davis Declaration, ¶ 7.

8. On May 13, 2010, the Court entered its Order Granting Compensatory Damages, Attorneys' Fees and Costs (DE 199), which resolved the OSC Application. Davis Declaration, ¶ 8.

9. Mr. Serino contacted Fennemore Craig, expressing a strong desire to appeal the

1 Court's Order. Davis Declaration, ¶ 9.

2 10. Because of the very short time frame involved in perfecting an appeal in the  
3 Bankruptcy Court, and in order to protect Mr. Serino's rights, Ms. Davis filed the Notice of  
4 Appeal, Statement of Issues on Appeal and Designation of Record on Appeal. Davis Declaration,  
5 ¶ 10.

6 11. For several months, Ms. Davis has assisted Mr. Serino with his efforts to locate  
7 new pro bono counsel. At the present time, new counsel has not been located and no one has  
8 contacted Ms. Davis advising her that they will take on the case. Davis Declaration, ¶ 11.

9 12. Because Mr. Serino has limited funds, is 97 years old, disabled and wheelchair  
10 bound, he did not want the appeal heard by the out of state Bankruptcy Appellate Panel. He  
11 therefore objected to the automatic reference of the appeal to the Bankruptcy Appellate Panel to  
12 ensure that the matter would be heard in Las Vegas. Davis Declaration, ¶ 12.

13 13. Mr. Serino has been provided with copies of the Notice of Appeal, Designation of  
14 Record on Appeal, Statement of Issues on Appeal, all pleadings filed to date in the appeal, all  
15 relevant minute entries from the Bankruptcy Court, the file materials and the record on appeal.  
16 At the present time, there are no pending deadlines for briefs, pleadings or other responses by him  
17 in this matter. Davis Declaration, ¶ 13.

18 14. Because of Mr. Serino's advanced age, health and other concerns, additional time  
19 is requested for briefs required from Mr. Serino, because it not likely that he will succeed in  
20 locating other pro bono counsel for the appeal. Davis Declaration, ¶ 14.

21 15. Ms. Davis and Fennemore Craig are active participants in and supporters of the  
22 Legal Aid Center of Southern Nevada. The scope of the OSC Application expanded significantly  
23 when the Bankruptcy Court scheduled it for four days of evidentiary hearings, and it resulted in a  
24 very large pro bono commitment on behalf of Mr. Serino. Through the conclusion of the post-  
25 hearing briefing, Fennemore Craig provided over 400 hours of pro bono time to Mr. Serino, 250  
26 hours of which consisted of time billed by Ms. Davis. Continued representation of Mr. Serino in

1 this appeal is beyond the scope of the initial engagement as pro bono counsel for Mr. Serino, and  
 2 it would result in a hardship to Fennemore Craig. Davis Declaration, ¶ 15.

3 16. On June 8, 2010, Appellees filed a Motion to Disqualify the Honorable James C.  
 4 Mahan (Dkt. 3), and that Motion remains pending.

5 17. On June 14, 2010, the Bankruptcy Court transmitted the Appeal Documents to the  
 6 District Court (Dkt. 223). A copy of the Certificate is attached as Exhibit 1. A briefing schedule  
 7 has not been issued by this Court.

8 18. On June 15, 2010, the Bankruptcy Court granted the Motion to Withdraw as  
 9 Counsel of Record for Nicholas Serino, by Order entered June 29, 2010 (Dkt. 226). A copy of  
 10 the Bankruptcy Court's Order is attached as Exhibit 2.

11 19. Mr. Serino does not object to the withdrawal of Ms. Davis and Fennemore Craig at  
 12 this time. Davis Declaration, ¶ 16.

13 20. Mr. Serino's address is: 3941 Odin Circle, Las Vegas, NV 89103. Davis  
 14 Declaration, ¶ 17.

### 15 III.

#### 16 DECLARATION OF LAUREL E. DAVIS

17 I, Laurel E. Davis, under penalty of perjury, declare as follows:

18 1. I am Pro Bono counsel for Nicholas Serino with respect to the Application for  
 19 Order to Show Cause Why Nicholas Serino, aka Richard Serino, Should not be Held in Contempt  
 20 of this Court's October 5, 2006 and January 16, 2008 Orders Pursuant to Fed.R.Bankr. 9020, that  
 21 was filed with the Bankruptcy Court on December 19, 2008 as Docket No. 127 ("OSC  
 22 Application"). I am over the age of 18, and I am mentally competent. This declaration is made  
 23 and based upon my personal knowledge, and if called upon to testify, I could and would do so. I  
 24 make this declaration in support of my Motion to Withdraw as Counsel of Record for Nicholas  
 25 Serino and to Expand Briefing Schedule ("Motion").

26 2. At the time the OSC Application was filed, Mr. Serino was not represented by

1 counsel.

2 3. In January of 2009, Mr. Serino sought representation through the Legal Aid Center  
3 of Southern Nevada.

4 4. On January 27, 2010, I prepared and filed a Notice of Appearance as Pro Bono  
5 counsel through the Legal Aid Center of Southern Nevada, with respect to the OSC Application.

6 5. Evidentiary hearings on the OSC Application were held April 27, 2009 (DE 172,  
7 Serino Testimony; DE 185, Rest); May 22, 2009 (DE 176, Vol. I; DE 177, Vol II); June 1, 2009  
8 (DE 182, Vol. I; DE 183, Vol. II); and June 22, 2009 (DE 184).

9 6. After the evidentiary hearings, the Court took the OSC Application under  
10 submission.

11 7. On April 13, 2010, the Court rendered its Opinion regarding the OSC Hearings,  
12 DE 196, which required a further declaration from counsel for Florisi to fix the award of  
13 attorneys' fees and costs.

14 8. On May 13, 2010, the Court entered its Order Granting Compensatory Damages,  
15 Attorneys' Fees and Costs, DE 199, which resolved the OSC Application.

16 9. Since April 23, 2010, Mr. Serino has made extensive efforts to communicate to me  
17 his desire to appeal the Court's Order and Judgment, including telephone calls, correspondence  
18 and visits to my office.

19 10. Because of the very short time frame involved in perfecting an appeal in the  
20 Bankruptcy Court, and in order to protect Mr. Serino's rights, Ms. Davis filed the Notice of  
21 Appeal, Statement of Issues on Appeal and Designation of Record on Appeal.

22 11. For several months, I have assisted Mr. Serino with his efforts to locate new pro  
23 bono counsel. At the present time, new counsel has not been located and no one has contacted  
24 me to advise that they will take on the case.

25 12. Because Mr. Serino has limited funds, is 97 years old, disabled and wheelchair  
26 bound, he did not want the appeal heard by the out of state Bankruptcy Appellate Panel. He

1 therefore objected to the automatic reference of the appeal to the Bankruptcy Appellate Panel to  
2 ensure that the matter would be heard in Las Vegas.

3 13. Mr. Serino has been provided with copies of the Notice of Appeal, Designation of  
4 Record on Appeal, Statement of Issues on Appeal, all pleadings filed to date in the appeal, all  
5 relevant minute entries from the Bankruptcy Court, the file materials and the record on appeal.  
6 At the present time, there are no pending deadlines for briefs, pleadings or other responses by him  
7 in this matter.

8 14. Because of Mr. Serino's advanced age, health and other concerns, additional time  
9 is requested for briefs required from Mr. Serino, because it not likely that he will succeed in  
10 locating other pro bono counsel for the appeal.

11 15. Fennemore Craig and I are active participants in and supporters of the Legal Aid  
12 Center of Southern Nevada. The scope of this matter expanded significantly when the  
13 Bankruptcy Court scheduled it for four days of evidentiary hearings, and it resulted in a very large  
14 pro bono commitment on behalf of Mr. Serino. Through the conclusion of the post-hearing  
15 briefing, Fennemore Craig provided over 400 hours of pro bono time to Mr. Serino, 250 hours of  
16 which consist of time billed by me. Continued representation of Mr. Serino in this appeal is  
17 beyond the scope of the initial engagement as pro bono counsel for Mr. Serino, and it would  
18 result in a hardship to Fennemore Craig.

19 16. Mr. Serino does not object to the withdrawal of Ms. Davis and Fennemore Craig at  
20 this time.

21 17. Mr. Serino's address is: 3941 Odin Circle, Las Vegas, NV 89103.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Dated: July 8, 2010.

4 /s/ Laurel E. Davis  
5 LAUREL E. DAVIS

6  
7 **IV.**  
8 **LEGAL ARGUMENT**

9 Local Rule 10-6 provides that “No attorney may withdraw after appearing in a case except  
10 by leave of court, after notice served on the affected client and opposing counsel.” Additionally,  
11 LR IA 10-7(a) states, in pertinent part, “[a]n attorney admitted to practice pursuant to any of these  
12 rules shall adhere to the standards of conduct prescribed by the Model Rules of Professional  
13 Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as  
14 such may be modified by this Court.”

15 Nevada Rules of Professional Conduct Rule 1.16 states, in pertinent part, as follows:

16 (b) Except as stated in paragraph (c), a lawyer may withdraw from  
17 the representation of a client if: ...

18 (1) Withdrawal can be accomplished without material  
19 adverse effect on the interests of the client;

20 (7) Other good cause for withdrawal exists.

21 (c) A lawyer must comply with applicable law requiring notice to  
22 or permission of a tribunal when terminating representation. When  
23 ordered to do so by a tribunal, a lawyer shall continue  
24 representation notwithstanding good cause for terminating the  
25 representation.

26 (d) Upon termination of representation, a lawyer shall take steps to  
the extent reasonably practicable to protect a client’s interests, such  
as giving reasonable notice to the client, allowing time for  
employment of other counsel, surrendering papers and property to

1 which the client is entitled and refunding any advance payment of  
 2 fee or expense that has not been earned or incurred. The lawyer  
 3 may retain papers relating to the client to the extent permitted by  
 4 other law.

5 Nevada Rules of Professional Conduct Rule 1.16.

6 As demonstrated by the accompanying Davis Declaration, Fennemore Craig has complied  
 7 with the relevant local and ethical rules. This appeal was perfected. Efforts were made to locate  
 8 new counsel for Mr. Serino through other pro bono organizations. Furthermore, Mr. Serino does  
 9 not object to the withdrawal of Ms. Davis as his counsel. The Motion should therefore be  
 10 granted.

11 V.

12 **CONCLUSION**

13 For all of the reasons set forth above, an Order should be entered which: (1) approves  
 14 withdrawal of Ms. Davis as counsel for Mr. Serino; (2) provides Mr. Serino with an additional 30  
 15 days to prepare and file his opening brief as well as his reply brief; and (3) for any further relief  
 16 that the court deems appropriate under the circumstances.

17 DATED this 8th day of July, 2010.

18 FENNEMORE CRAIG, P.C.

19 /s/ Laurel E. Davis

20 By \_\_\_\_\_  
 21 LAUREL E. DAVIS

22 Pro Bono Counsel for Nicholas Serino,  
 23 Legal Aid Center of Southern Nevada

24 **IT IS SO ORDERED.**

25   
 26 **UNITED STATES MAGISTRATE JUDGE**  
**DATED: 7-12-10**

**CERTIFICATE OF SERVICE**

1. On July 8, 2010 I served the following document(s):

**MOTION TO WITHDRAW AS COUNSEL OF RECORD AND TO EXPAND BRIEFING SCHEDULE**

2. I served the above-named document(s) by the following means to the persons as listed below:

[x] a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

CHRISTINA ANN-MARIE DIEDOARDO: [Christina@diedoardolaw.com](mailto:Christina@diedoardolaw.com)

[x] b. **United States mail, postage fully prepaid** (list persons and addresses):

Nicholas Serino, 3941 Odin Circle, Las Vegas, NV 89103

**I declare under penalty of perjury that the foregoing is true and correct.**

DATED this 8th day of July, 2010.

/s/ Mia Hurtado  
An Employee of Fennemore Craig, P.C.